IN THE HIGH COURT OF BOMBAY AT GOA
****

CIVIL REVISION APPLICATION NO. 14 OF 2004

Smt. Clotildes Fernandes,
major, married, r/o
Aviao, Caranzalem, Tiswadi,
Goa, represented by her attorney
Smt. Kshmata Vinayak Dessai,
r/o Dona Paula, Tiswadi, Goa. .. Petitioner

Versus

1. Shri Sadique Shikh,
major, married, builder,
having his
office on the lst floor
Rani Pramilla Arcade,
18th June Road, Panaji, Goa,

2. Smt. Vijaya R. Satardekar,
major, married, business,
r/o lst Floor, Cedmar Apts.,
M. G. Road, Panaji, Goa, and

3. Shri Joe Mathias, major,
married, builder, having
his office at Mathias Plaza,
18th June Road, Panaji, Goa. .. Respondents.

Shri A. D. Bhobe, advocate for the petitioner.

Shri Y. V. Nadkarni, advocate for the respondents.

CORAM : S. A. BOBDE, J.

DATE : 1st July, 2004.

ORAL ORDER

This Civil Revision Application is filed against the Order dated 19th January, 2004, by which the Ist Additional District Judge, Panaji, has refused to condone the delay in filing an appeal before him.

2. At the outset it must be noted that the learned counsel for the respondents waives the objection as to the

tenability of the Civil Revision Application.

3. The matter is therefore considered on merits. The petitioner initially filed a revision before this Court against an order dated 2nd May, 2000, passed by the learned Civil Judge, Senior Division, Panaji, in Inventory Proceedings No.993/40/A. This revision petition was found to be untenable, since an appeal lay against the said Order. The petitioner, therefore, withdrew the revision petition in order to file an appeal.

4. There was a delay in filing this Appeal. Therefore, the petitioner preferred an application for condonation of delay.

5. This application for condonation of delay has been rejected by the Appellate Court on two grounds, one of which is insubstantial since it involves the mere non-endorsement of a correction made in the application for condonation of delay. The second reason, however, is substantial. The application for condonation of delay preferred by the petitioner has been rejected by the trial court on the ground that the Appeal in which the application is made is not maintainable before it, on account of pecuniary jurisdiction of the Appellate Court.

6. I am of the view that the reason is perfectly

tenable in view of Section 5 of the Limitation Act, 1963, which reads as follows:-

> **"5. Extension of prescribed period in certain cases.**
>
> Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

7. It is clear that an appellant who files an appeal beyond the prescribed period of limitation is bound to satisfy the Court before which an appeal lies, that he had sufficient cause for not preferring the appeal within such period. Obviously, therefore, what is contemplated is that the application for condonation of delay must be filed before a Court to which an appeal lies and is tenable.

8. In the present case, admittedly the appeal was not tenable. In fact, the learned counsel for the petitioner appears to have accepted the want of jurisdiction of the Appellate Court.

9. In the circumstances, I am of the view that the Appellate Court was right in rejecting the application for condonation of delay on the ground that no appeal lay before it in regard to which the application for condonation of delay

was made. There is no merit in the revision petition which is hereby dismissed.

S. A. BOBDE,J.

mc.